

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RALPH NICOLAS MADARANG
a.k.a. RALPH MARZAN MADARANG
214 West Capital Avenue
Milpitas, CA 94035

Registered Nurse License No. 463700

Respondent.

Case No. 2006-254

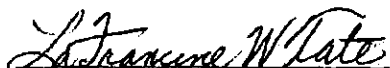
OAH No. N2007030025

DECISION AFTER NON-ADOPTION

The attached Decision After Non-Adoption is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on **February 14, 2008.**

IT IS SO ORDERED this 15th day of **January 2008.**



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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DECISION AFTER NONADOPTION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on July 9, 2007, in Oakland, California. Jonathan Cooper, Deputy Attorney General, represented complainant Ruth Ann Terry, M.P.H., R.N. Daniel Jensen, Attorney at Law, 4675 Stevens Creek Boulevard, Suite 100, Santa Clara, California 95051, represented respondent Ralph Nicolas Madarang, who was present at the hearing. The matter was then submitted for decision on July 9, 2007.

On August 8, 2007, Judge Tompkin issued her Proposed Decision. On October 4, 2007, the Board issued its Notice of Nonadoption of the Proposed Decision. On October 22, 2007, the Board issued its Order Fixing Date for Submission of Written Argument. After review of the entire administrative record including the transcript and written argument from both parties' attorneys including Supplemental Argument from respondent's attorney, the Board hereby renders its decision in this matter.

FACTUAL FINDINGS

1. Complainant Ruth Ann Terry, M.P.H., R.N., made the Accusation in her official capacity as Executive Officer of the Board of Registered Nursing (Board).

2. On March 31, 1991, the Board issued Registered Nurse License No. 436700 to Ralph Nicolas Madarang, also known as Ralph Marzan Madarang (respondent). The license was in full force and effect at all times relevant to this proceeding and has been renewed through November 30, 2008.

3. The Board seeks to revoke or suspend respondent's license because respondent has been convicted of indecent exposure and criminal battery. There is no prior history of license discipline.

Respondent's Criminal Convictions

4. On November 3, 2003, in the Superior Court of the State of California for the County of Santa Clara, respondent was convicted, following a jury trial, of violating Penal Code sections 314.1 (indecent exposure) and 243.4 (sexual battery), both misdemeanors. Both crimes are substantially related to the qualifications, functions or duties of a registered nurse.

On December 19, 2003, respondent was placed on three years of formal probation on terms and conditions that included serving 45 days in jail and payment of fines and penalties totaling \$510.50. Respondent was also ordered not to have any contact with the victim, to participate in psychiatric counseling, and to register as a sex offender pursuant to Penal Code section 290. On May 17, 2007, respondent's convictions were expunged pursuant to Penal Code section 1203.4. However, respondent is still required to register as a sex offender¹ and must update his registration with local police annually. Respondent represents that he is current in his registration.

5. The events underlying respondent's sexual battery conviction occurred between April 1, 2002, and April 30, 2002. Respondent touched the breasts of a female co-worker against her will for the purpose of sexual arousal, gratification and abuse.

The incident giving rise to respondent's indecent exposure conviction occurred on June 29, 2002. On that date respondent exposed his private parts in a public place where there were other persons present who might be annoyed or offended by his conduct.

6. The details of respondent's offenses are set forth in an investigative report by the Department of Developmental Services. According to the report, respondent's victim, Renalda Sanchez, was a janitor at Agnews Developmental Center where respondent was also employed. Sanchez told investigators that respondent began harassing her shortly after

¹ Penal Code section 290 requires any person convicted of violating Penal 243.4 to register as a sex offender for life.

she began working at the Center. He initiated contact by trying to get her to go out with him, throwing kisses to her and singing to her. On separate occasions in February 2002 respondent chased Sanchez around a room trying to grab her, snuck up behind her and hugged her very tightly, and tried to touch her on the breast and groin. Sanchez told respondent that she was not interested in him, and had a co-worker tell respondent the same thing on her behalf. In mid-April 2002, respondent entered a client's bedroom where Sanchez was alone mopping the floor. He closed the door and grabbed her from behind, squeezing her breasts very hard over her clothes. Sanchez slapped respondent and left the room. On June 29, 2002, respondent exposed his erect penis to Sanchez in the activity room of the Center while several nonverbal clients were present.

During a July 16, 2002, interview of respondent by investigators, respondent denied grabbing Sanchez's breasts or exposing himself to her. With respect to the allegation that he exposed himself, respondent claimed that he was wearing Levi jeans with a flesh colored shirt on the day of the incident. He reached into his pants pocket and a rubber glove came out with his keys. According to respondent, at that point Sanchez said "No, No, No" and ran from the room.

On July 22, 2002, respondent resigned from the Center without explanation. Respondent testified he was advised to quit by his union representatives.

7. At hearing (and at his criminal trial) respondent admitted grabbing and squeezing Sanchez's breasts without her permission and that he lied to investigators when he told them he had not touched Sanchez. He also acknowledged that squeezing Sanchez's breasts was wrong and that he was appropriately convicted of sexual battery.

Respondent has consistently denied (at hearing and during his criminal trial) exposing himself to Sanchez and believes that he was wrongly convicted of indecent exposure. However, during the one-year court ordered psychological counseling program respondent stated during group counseling that he had exposed himself to Sanchez. Respondent testified he made the admission because the counselor told him that he had to do so in order to satisfy the conditions of his probation. Respondent believes he benefited from counseling and that he will not engage in similar inappropriate behavior again. Respondent avers that he has not exposed himself or touched anyone inappropriately since completing the counseling program. He also points out that it has been over five years since the incidents that resulted in his convictions and that he has continued to work successfully as a nurse since that time. Respondent requests that he be permitted to retain his registered nurse license.

Related Matters

8. Respondent was born in the Philippines. He is 52 years old. He earned his nursing degree in 1978 from Perpetual Help College of Rizal in Las Pinas located in Metro Manila in the Philippines. He was issued a California nursing license in 1991.

Respondent is currently employed as a Registered Nurse-Minimum Data Set (MDS) coordinator at Valley House Care Center, a skilled nursing and rehabilitation facility for the elderly. His primary responsibility is to input information taken from patient charts in preparation for transfer. His function is primarily clerical and he has almost no patient contact. However, a nursing license is required for respondent's job. Prior to transferring to his current position respondent worked as a staff nurse, nursing supervisor and charge nurse. Respondent was rehired at Valley House (he had previously worked at Valley House from 1988 to 1999) in May 2003. He was convicted in November 2003, shortly after being rehired at Valley House. Respondent testified he told the former director of nursing about his convictions but did not tell administrators.

9. Respondent has engaged in various community activities through the years. He is one of the founding members of a small church, Living Word Christian Fellowship, which started in 1991. He is also the vice president of Infantarians of Northern California, an organization that provides assistance during disasters in the Philippines and funds college scholarships for poor students from Infanta, Pangasinan in the Philippines. Respondent has also given motivational speeches to Philippine students to encourage them to achieve in school.

10. Malcolm Burke testified on respondent's behalf at hearing. Burke is an administrator at Valley House. He has supervised respondent for the last four years. Respondent was initially hired as a charge nurse, but Burke transferred respondent to the MDS coordinator position approximately two years ago because he felt respondent was the most qualified for the position. Burke characterizes respondent as an "exemplary employee" and a "man of integrity" that he can trust and rely upon. He has observed that respondent is well liked by his peers and all employees. Burke learned of respondent's conviction last year and was very surprised by the information. Respondent provided only limited details, telling Burke that it was someone's perception that he was harassing them and that, essentially, he was innocent. Burke did not know until the day of the hearing that respondent is required to register as a sex offender. Burke admits that he would probably not have hired respondent if he had known at the time of hire that respondent was required to register as a sex offender and/or had been convicted of sexual battery. However, based upon his personal observations of respondent, he does not feel respondent poses a threat to clients in care. He is willing to continue to employ respondent and to establish extra safeguards to ensure there is no patient contact if respondent is allowed to retain his license.

Registered nurse Ruby Abalos also testified on respondent's behalf. Abalos is the director of nursing services at Valley House. She supervises respondent. Abalos has known respondent since 1993. She characterizes respondent as an ideal staff nurse, a good supervisor and charge nurse, a team player who is well liked by staff and residents and a kind and caring individual. Abalos never saw respondent sexually harass anyone or heard anyone complain about sexually inappropriate conduct by respondent.

Abalos learned a few months prior to hearing that respondent had been convicted of indecent exposure, but only learned at hearing that he is required to register as a sex offender. She was surprised at the information and it was of concern, but based on her personal knowledge of respondent she does not feel he poses a risk to clients. However, she admits that she would not currently hire a person who had been convicted of sexual battery or indecent exposure. Abalos confirmed that respondent's job as MDS coordinator is primarily clerical, but also testified that he is authorized to answer call lights and has assisted other nurses during emergencies.

11. Respondent offered numerous letters of reference at hearing. In a letter dated June 15, 2007, Jamela Mangente, a registered nurse and the assistant nursing director at Valley House writes that respondent has demonstrated professionalism and exemplary conduct in the performance of his duties and in his interactions with all employees at the Center. Mangente describes respondent as an excellent nurse who responds well in high pressure situations, a team player and a kind and sincere individual. In a June 21, 2007, letter Feliciano Sunga, a registered nurse and the admissions director at Valley House, writes that respondent has always demonstrated professionalism and exceptional conduct in the performance of his duties. Rosario Umali, a registered nurse and director of staff development at Valley House expresses similar sentiments in a letter dated July 17, 2006. In a letter dated July 13, 2006, registered nurse Stephanie Edurese, one of respondent's co-workers, writes that respondent is a caring, efficient and conscientious nurse who is well liked and respected by staff and patients. In a letter dated July 13, 2006, Jean Paul Bilbao, one of respondent's former co-workers at Valley House, writes that respondent impressed him with his remarkable work ethic, efficiency and genuine concern for their elderly patients during the time that he worked with respondent. Bilbao considers respondent a person of integrity and good character.

Juliana Malliari, a patient at Valley House, writes that she has resided at Valley House for five years and that respondent has always been caring and respectful when providing care to her and other elderly patients. She notes that respondent is well-liked and respected by the patients.

In letters dated July 21, 2006, and June 12, 2007, Pablo T. de Leon, pastor of Living Word Christian Fellowship, writes that since he became pastor in 2002 he has observed that respondent is a good family man, loving father and active and supportive church member who holds prayer meetings and bible studies in his home. He describes respondent as a man of "moral integrity."

In a letter dated June 12, 2006, Alex Magno, president of Infantarians of Northern California describes respondent as a person of high moral character, an exemplary family man and a very compassionate individual.

12. Respondent also submitted numerous certificates of completion for nursing related courses, including such courses as MDS Basics and MDS Advanced, Hospice 101, End of Life Care, Wound and Skin Care Management and Stroke: Risk Factors and Therapeutic Management.

Cost Recovery

13. The Board seeks to recover its investigative and enforcement costs from respondent pursuant to Business and Professions Code section 125.3. It certifies that the following costs were incurred in connection with the investigation and prosecution of this Accusation through July 6, 2007:

Attorney General Costs

Legal Analyst

2005-2006	12.75 hours @ \$92 per hour	\$1,173.00
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Deputy Attorney General

2005-2006	4.50 hours @ \$146 per hour	657.00
2006-2007	16.00 hours @ \$158 per hour	2,528.00
2007-2008	4.00 hours @ \$158 per hour	<u>632.00</u>

TOTAL COSTS INCURRED:	\$4,990.00
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14. Respondent did not contest the Board's costs.

LEGAL CONCLUSIONS

1. Cause for disciplinary action against respondent exists under Business and Professions Code sections 490 and 2761, subdivision (f), on the ground of unprofessional conduct in that respondent was convicted of indecent exposure and sexual battery, as set forth in Findings 4, 5 and 6.

2. In mitigation, respondent has satisfied all the conditions of his criminal probation (including psychiatric counseling) and has had his convictions expunged. There was no evidence presented that he had committed this type of misconduct with other co-workers or acted inappropriately toward any patients during the 16 years that he has been licensed here or in the Philippines since 1978. He has no prior history of license discipline and his reputation in the nursing community is that of an excellent nurse, who is kind, compassionate and professional with moral integrity. Respondent is also active in the community and has taken many courses related to nursing.

In aggravation, respondent was convicted of two very serious offenses, indecent exposure and sexual battery, which justifiably raise significant concerns about the safety of patients who

are in his care. The Administrative Law Judge's characterization of his conduct as a "romantic pursuit" that went too far misses the point. There is nothing romantic about a licensed health care professional committing sexual battery and exposing oneself to a co-worker in front of patients. Respondent's misconduct was not an isolated incident in that he repeatedly harassed his co-worker. Moreover, he exposed his erected penis in the presence of patients who, due to their physical conditions, were subjected to seeing respondent's co-worker victimized without being able to verbalize their concerns regarding the incident. While it has been five years since respondent engaged in this criminal conduct, the extremely serious nature of the convictions along with his misconduct being committed at work in front of patients warrants revocation of his license.

The protection of the public is the Board's highest priority as mandated by the Legislature and "whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Section 2708.1 of the Business and Professions Code.) In this case at hand, the board cannot be assured that the public will be protected if respondent is allowed to retain his license even if it is placed on probation.

3. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." That section also provides that the Board's certification of the actual costs constitutes prima facie evidence of the reasonable costs. The costs set forth in Finding 13 were established by such a certification. The reasonable costs of investigation and enforcement are therefore determined to be \$4,990.

ORDER

It is hereby ordered that Registered Nurse License Number 463700 issued to respondent Ralph Nicolas Madarang, also known as Ralph Marzan Madarang, is revoked. Respondent is ordered to pay forthwith cost recovery in the amount of \$4,990.

This Decision shall become effective on February 14, 2008.

IT IS SO ORDERED this 16th day of January 2008.



LAFRANCINE TATE
BOARD OF REGISTERED NURSING
STATE OF CALIFORNIA

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of the State of California
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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

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214 West Capitol Avenue
Milpitas, California 94035

15 Registered Nurse License No. 463700

16 Respondent.

Case No. 2006-254

OAH No.

A C C U S A T I O N

17
18 Complainant alleges:

19 PARTIES

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about March 31, 1991, the Board of Registered Nursing issued
24 Registered Nurse License Number 463700 to Ralph Nicolas Madarang aka Ralph Marzan
25 Madarang (Respondent). The Registered Nurse License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on November 30, 2006, unless renewed.

27 JURISDICTION

28 3. This Accusation is brought before the Board of Registered Nursing

(Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

...

7. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has

1 been affirmed on appeal, or when an order granting probation is made suspending the imposition
2 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
3 Penal Code."

4 8. California Code of Regulations, title 16, section 1444, states in pertinent
5 part:

6 "A conviction or act shall be considered to be substantially related to the
7 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
8 present or potential unfitness of a registered nurse to practice in a manner consistent with the
9 public health, safety, or welfare. Such convictions or acts shall include but not be limited to the
10 following:

11 "(a) Assaultive or abusive conduct including, but not limited to, those violations
12 listed in subdivision (d) of Penal Code Section 11160.

13 "...

14 "(d) Any conviction or act subject to an order of registration pursuant to Section
15 290 of the Penal Code."

16 9. Section 125.3 of the Code provides, in pertinent part, that the Board may
17 request the administrative law judge to direct a licensee found to have committed a violation or
18 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
19 and enforcement of the case.

20 CAUSE FOR DISCIPLINE

21 (Criminal Convictions)

22 10. Respondent is subject to disciplinary action under section Business and
23 Professions Code sections 490 and 2761(f) for unprofessional conduct in that respondent was
24 convicted of indecent exposure and sexual battery. The aforementioned criminal offenses, as
25 defined by section 1444 of Title 16 of the California Code of Regulations, are substantially
26 related to the qualifications, functions and duties of a registered nurse. The circumstances are as
27 follows:

28 a. On or about November 10, 2003 in a criminal proceeding entitled

1 People of the State of California v. Ralph Marzan Madarang in the Superior Court of California
2 for the County of Santa Clara, Case No. CC265853, the respondent was convicted by a jury
3 verdict of guilty for violating Penal Code section 314.1 (Indecent Exposure) and violating Penal
4 Code section 243.4(d) (Sexual Battery), both misdemeanors.

5 b. On or about December 19, 2003, the respondent was sentenced to
6 serve 45 days in jail, placed on formal probation for a period of 3 years, ordered to pay a
7 \$100.00 fine, a \$100.00 restitution fine, and to pay \$170.00 and \$140.50 in court costs. The
8 respondent was ordered to register with local law enforcement authorities pursuant to Penal Code
9 section 290 and to have no contact with the victim.

10 PRAYER


11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

13 1. Revoking or suspending Registered Nurse License Number 463700 issued
14 to Ralph Nicolas Madarang aka Ralph Marzan Madarang.

15 2. Ordering Ralph Nicolas Madarang to pay the Board of Registered Nursing
16 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
17 Professions Code section 125.3;

18 3. Taking such other and further action as deemed necessary and proper.
19

20 DATED: 6/5/06

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23 
24 RUTH ANN TERRY, M.P.H., R.N.
25 Executive Officer
26 Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant